

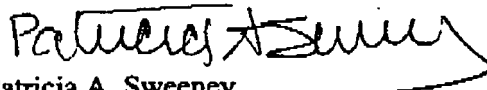
## REMARKS

Applicant has cancelled claims 10-15, and 32. Currently pending with the entry of this amendment are claims 3, 4, 9, 27, 31 and 34.

In an interview with the Examiner on August 23, 2005, the applicant's attorney discussed with the Examiner that the presentation of the nucleotide sequence of SEQ ID NO: 7, the genomic sequence of the SBMu200 gene, along with its use, provides enablement for claims relating to the sequence and vector, to which the Examiner agreed. The Examiner also agreed that claims to plants and plant cells of maize comprising the sequence are allowable, and claims 4, 9, 27 and 31 are amended to so recite. The Examiner also located the Deposit Statement previously submitted, and has requested a Statement be re-submitted. Any reference to seed is removed, and a copy of both the deposit form and the receipt from the ATCC is included with this amendment, reflecting receipt of deposit of vector pBluescript SK in *E. coli* of SB200-8.1. The Examiner's attention is directed to the last paragraph of the Statement indicating that restrictions on the deposit will be removed irrevocably upon the granting of a patent. The information is also present in the conditions set out in the receipt from the ATCC. The deposit number was presented in the application in claim 34. Claim 34 is thus also in condition for allowance.

This amendment is presented to comply with the Examiner's request and does not present new matter. Entry is respectfully requested along with allowance of claims 3, 4, 9, 27 and 34.

Respectfully submitted,



Patricia A. Sweeney  
Reg. No. 32,733

Patricia A. Sweeney  
1835 Pleasant St.  
West Des Moines, IA 50265-2334  
(515)222-0921

Attorney Docket No.1148D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

|   |        |                       |
|---|--------|-----------------------|
| Applicant: Marc Albertsen et al.  | 1      | Art Unit: 1638        |
| Serial No.: 10/021,657  | 1      |                       |
| Filed: December 14, 2001  | 1      | Examiner: A. Kubelik  |
| For: Nucleotide Sequences Mediating<br>Fertility and Method of Using Same | 1<br>1 | Confirmation No. 5787 |

DEPOSIT STATEMENT

Commissioner for Patents  
Washington, D.C. 20231

Sir:

The undersigned attorney, an attorney of record in this application, makes the following statement regarding deposits:

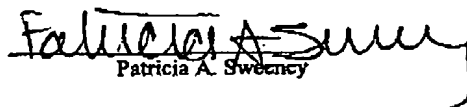
A deposit of host *E. coli* having a vector with DNA insert SB2008.1 is and has been maintained by Pioneer Hi-Bred International, Inc. since prior to the filing date of this application. Access to the deposit will be available during the pendency of this application to the Commissioner of Patents and Trademarks and persons determined by the Commissioner to be entitled thereto upon request. Upon allowance of any claims in the application, all restrictions on availability to the public of such material will be removed by affording access to a deposit of the microorganism with the American Type Culture Collection (ATCC) Rockville, MD. Additionally, applicant will meet all the requirements of 37 CFR§1.807, including providing an indication of the viability of the sample when deposit is made. The microorganism deposited with the ATCC will be taken from the same deposit maintained by Pioneer Hi-Bred International

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CERTIFICATE OF MAILING (37 C.F.R. § 1.8(a))

I hereby certify that this document was sent by facsimile transmission to The US Patent Office, AFTER FINAL, ATTN: A. KUBLIEK, facsimile (703)872-9306 on the date indicated below.

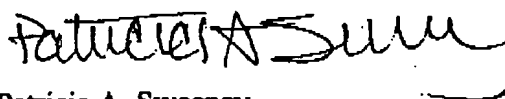
Aug 24, 2005  
Date

  
Patricia A. Sweeney

since prior to the filing date of this application. The deposit will be maintained in the ATCC depository, which is a public depository, for a period of 30 years or five years after the most recent request, or for the effective life of the patent, whichever is longer, and will be replaced if it becomes nonviable during that period.

All restrictions on availability of the aforementioned deposits will be removed irrevocably upon the granting of a patent on the captioned application or a continuing application based thereon.

Respectfully submitted,



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Reg. No. 32,733

Patricia A. Sweeney  
1835 Pleasant  
West Des Moines, IA 50265-2334  
(515)222-0921  
(515)267-0556 (Fax)

# ATCC

10801 University Blvd • Manassas, VA 20110-2209 • Telephone: 703-365-2700 • FAX: 703-

## BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE

### INTERNATIONAL FORM

#### RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT ISSUED PURSUANT TO RULE 7.3 AND VIABILITY STATEMENT ISSUED PURSUANT TO RULE 10.2

To: (Name and Address of Depositor or Attorney)

Pioneer Hi-Bred International, Inc.  
Attn: Herbert H. Jervis  
7100 N.W. 62nd Ave., Darwin Bldg.  
Johnston, IA 50131

Deposited on Behalf of: Pioneer Hi-Bred International, Inc.

Identification Reference by Depositor:

ATCC Designation

p Bluescript SK- in SOLR *Escherichia coli*, SB200-8.1

98931

The deposits were accompanied by: \_\_\_ a scientific description X a proposed taxonomic description indicated above. The deposits were received October 16, 1998 by this International Depository Authority and have been accepted.

AT YOUR REQUEST: X We will inform you of requests for the strains for 30 years.

The strains will be made available if a patent office signatory to the Budapest Treaty certifies one's right to receive, or if a U.S. Patent is issued citing the strains, and ATCC is instructed by the United States Patent & Trademark Office or the depositor to release said strains.

If the cultures should die or be destroyed during the effective term of the deposit, it shall be your responsibility to replace them with living cultures of the same.

The strains will be maintained for a period of at least 30 years from date of deposit, or five years after the most recent request for a sample, whichever is longer. The United States and many other countries are signatory to the Budapest Treaty.

The viability of the cultures cited above was tested October 22, 1998. On that date, the cultures were viable.

International Depository Authority: American Type Culture Collection, Manassas, VA 20110-2209 USA.

Signature of person having authority to represent ATCC:

Barbara M. Halley 174  
Barbara M. Halley, Administrator, Patent Depository

Date: October 22, 1998

11. ATCC will notify you of your ATCC number after confirmation of viability testing is complete (No Charge).  
Name of Individual to notify: Herb Jervis  
Fax No. (515) 334-6883 Telephone No. (515) 334-4468
12. Payment by check, or credit card (MasterCard, VISA or American Express), must accompany the deposit unless prior arrangements for billing have been made and approved. If arrangements have been made to bill you for services, please indicate person who should receive invoice. Also, please include P.O. number.  
Acct. No. 27194  
Credit Card number (indicate MasterCard, VISA, or American Express) \_\_\_\_\_ Expiration Date \_\_\_\_\_  
# \_\_\_\_\_  
Type or print the name shown on credit card \_\_\_\_\_ Signature \_\_\_\_\_
- For ATCC use only: Auth: \_\_\_\_\_ ROC #: \_\_\_\_\_
13. Name, address, telephone and facsimile number of your attorney of record.  
Herbert H. Jervis, 7100 N.W. 62nd Avenue, Darwin Bldg. Johnston, Iowa 50131  
515-334-4468 Fax-515-334-6883 (Ref: Docket or Case No. \_\_\_\_\_)
14. **MUST BE COMPLETED.** Deposited on behalf of: (Verify with your management who owns the deposit. The owner is usually a company or institute, and normally is not an individual.)  
Pioneer Hi-Bred International, Inc.

*I understand and agree that the deposit may not be withdrawn by me for a period specified in Rule 9.1 of the Budapest Treaty (at least 30 years after the date of deposit or 5 years after the date of the most recent request for the deposit, whichever is longer), and that if a culture should die or be destroyed during the life of the patent, or the period of time so specified, it is my responsibility to replace it with a living culture of the same organism or cell. In the cases of viruses, cell cultures, plasmids, embryos, and seeds, it is my responsibility to supply a sufficient quantity for distribution for the period of time specified above.*

Typed Name Herbert H. Jervis Signature \_\_\_\_\_  
Address 7100 N.W. 62nd Ave., Darwin Bldg.  
Johnston, Iowa 50131 U.S.A.

10/8/98  
Date

**THIS FORM MUST BE COMPLETED IN ENGLISH**

ADDRESS SHIPMENTS AND FORM TO THE ATTENTION OF:

Patent Depository  
American Type Culture Collection  
10801 University Blvd.  
Manassas, VA 20110-2209 U.S.A.

**ALL FEES SUBJECT TO CHANGE:**

**FEES:** 30 years' storage \$600. 30 years' notification \$360. Viability testing \$100 to \$400 or quoted price, dependent upon necessary material and/or equipment. Prepare additional samples of cells or hybridomas \$500. Return sample for approval (if not submitted frozen or freeze-dried or the required number) \$130. Additional costs for return of samples outside U.S.A. **STORAGE:** Cultures are stored for 30 years from date of deposit or five years after the last request for a sample, whichever is longer, as required under the rules of patent offices in most countries.

ATCC USE ONLY: ATCC DESIGNATION \_\_\_\_\_ REC'D \_\_\_\_\_ V.T. RESULT \_\_\_\_\_  
Name of Deposit \_\_\_\_\_ Strain Designation \_\_\_\_\_

Form BP/1 Page 2 of 2, Rev. 1/97

11. ATCC will notify you of your ATCC number after confirmation of viability testing is complete (No Charge).  
Name of individual to notify: Herb Jervis

Fax No. (515) 334-6883 Telephone No. (515) 334-4468

12. Payment by check, or credit card (MasterCard, VISA or American Express), must accompany the deposit unless prior arrangements for billing have been made and approved. If arrangements have been made to bill you for services, please indicate person who should receive invoice. Also, please include P.O. number.

Acct. No. 27194

Credit Card number (indicate MasterCard, VISA, or American Express)

Expiration Date

Type or print the name shown on credit card

Signature

For ATCC use only: Auth: \_\_\_\_\_ ROC #: \_\_\_\_\_

13. Name, address, telephone and facsimile number of your attorney of record.  
Herbert H. Jervis, 7100 N.W. 62nd Avenue, Darwin Bldg. Johnston, Iowa 50131  
515-334-4468 Fax-515-334-6883 (Ref: Docket or Case No. \_\_\_\_\_)

14. **MUST BE COMPLETED.** Deposited on behalf of: (Verify with your management who owns the deposit. The owner is usually a company or institute, and normally is not an individual.)  
Pioneer Hi-Bred International, Inc.

*I understand and agree that the deposit may not be withdrawn by me for a period specified in Rule 9.1 of the Budapest Treaty (at least 30 years after the date of deposit or 5 years after the date of the most recent request for the deposit, whichever is longer), and that if a culture should die or be destroyed during the life of the patent, or the period of time so specified, it is my responsibility to replace it with a living culture of the same organism or cell. In the cases of viruses, cell cultures, plasmids, embryos, and seeds, it is my responsibility to supply a sufficient quantity for distribution for the period of time specified above.*

Typed Name Herbert H. Jervis Signature \_\_\_\_\_  
Address 7100 N.W. 62nd Ave., Darwin Bldg.  
Johnston, Iowa 50131 U.S.A.

Date 10/8/98

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Name of Deposit \_\_\_\_\_ Strain Designation \_\_\_\_\_

Form 2Pr1 Page 2 of 2, Rev. 1/97